

00715

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-187525

DATE: October 15, 1976

MATTER OF: Payment of expenses for bar review course, bar examination, and court admission.

- DIGEST: 1. Costs of attending a bar review course are properly payable when the head of an agency determines that members of his legal staff should take a bar review course under Government Employees' Training Act, 5 U.S.C. §§ 4101-4118 (1970), as such course is within the definition of "training" in 5 U.S.C. § 4104(4).
2. Examinations which are not an integral part of a course of instruction or of themselves a process designed to impart knowledges and skills to examinee are not within definition of "training" in 5 U.S.C. § 4104(4) 1970. Therefore, Government reimbursement of costs of Government employee in taking bar examination is not permitted by terms of Government Employees' Training Act, 5 U.S.C. §§ 4101-4118 (1970).
3. Reimbursement by Government of costs of admission to bar incurred by Government employee cannot be made from appropriated funds because privilege of practicing before a particular court is one personal to the attorney and is in nature of expense necessary to qualify for Federal employment.

By letter dated September 23, 1976, Mr. John P. Kratzke, Acting Managing Director of the Interstate Commerce Commission (Commission) requests an advance decision as to whether the Commission may properly pay the expenses incurred by a Commission employee for taking a bar review course, for taking a bar examination, and for paying a fee upon admission to the bar. We will treat the present submission as a request for a decision from an agency head under 31 U.S.C. § 74 (1970), and our reply is made to the Commission Chairman. Cf., 47 Comp. Gen. 70, 71 (1967).

Mr. Kratzke explains in his letter that the United States District Court for the Central District of California has announced that it will not permit appearances by any attorney other than one who is admitted to the Bar of the State of California. Local Rule 1.3(b)(1).

Mr. Kratzke indicates in his letter that the effect of this rule is to prevent the Associate Regional Counsel of the Sixth Region of the Commission, Mr. Miles L. Kavaller, from practicing before the District Court until he passes the Bar of the State of California. Apparently his job requires him to practice before that court. Mr. Kavaller has expressed his desire to take a bar review course "in order to provide a reasonable assurance" of passing the California bar. Mr. Kratzke further states:

"Since the purpose of having Associate Regional Counsel Kavaller take this Bar is to benefit the advancement of the Commission's enforcement program, he is requesting that the Commission pay the expenses related to the Bar Review course and incidental fees for taking the examination."

The Government Employees' Training Act, 5 U.S.C. §§ 4101-4118 (1970), is the basic authority for use of appropriated funds to train Government employees. 5 U.S.C. § 4109(a)(2) authorizes the head of an agency to pay, or reimburse an employee, for all or a part of the necessary expenses of training, including travel and per diem, transportation costs, tuition and matriculation fees, library and laboratory fees, purchase or rental of books, materials and supplies, and other services or facilities directly related to the training of the employee. The training for which the head of an agency is permitted to pay is defined by 5 U.S.C. § 4101(4) as:

"* * * the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which are or will be directly related to the performance by the employee of official duties for the Government, in order to increase the knowledge, proficiency, ability, skill, and qualifications of the employee in the performance of official duties."

In light of this language, the costs of attending a bar review course are properly payable when the head of an agency determines, under the Government Employees' Training Act, that members of his legal staff should take a bar review course. Cf., 55 Comp. Gen. 759, 761 (1976).

In contrast to this definition of "training", an "examination" tests the employee on the skills acquired by his training, which may also qualify an employee for professional certification or license. The regulations of the Civil Service Commission issued pursuant to 5 U.S.C. § 4118--ch. 410, 6-3(d)(4) Inst. 212, September 6, 1974, of the Federal Personnel Manual--state, in discussing services related to training for which payment is proper:

"* * * an examination fee may be paid if the examination is used as a diagnostic tool to determine deficiencies in knowledges and skills needed by an employee for the performance of official duties so as to ascertain his training needs when the agency is unable to determine those needs through supervisory evaluation or other available agency appraisal system or when such evaluation or appraisal system would be more costly. The cost of an examination would not otherwise be payable except when the cost of the examination is inextricably mixed with the cost of a program of training or when the examination process itself is designed to impart knowledges and skills to the examinee." (Emphasis supplied.)

Under this interpretation of the statute, the costs of an examination given to conclude a university course, for example, would normally be payable. Costs, in the form of examination fees, on the other hand, are not payable since there is no indication that "the cost of the examination is inextricably mixed with the cost of a program of training" or that "the examination process itself is designed to impart knowledges and skills to the examinee." This distinction between "training" and "examination" has been drawn before by this Office in 55 Comp. Gen. 759, supra, where we stated at page 761:

"While 5 U.S.C. § 4109 (1970), supra, authorizes agency payment of some or all training costs, and while the implementing regulation contained in the Federal Personnel Manual, ch. 410, § 6-1(a) permits an agency head to define 'necessary training expenses' for the purpose of payment of those expenses, an agency head is not authorized to expand the statutory definition of 'training' or to pay for items not contemplated by that definition. Because an examination such as the one here involved [Accredited Rural Appraiser examination] does not fall within the definition of training, no reimbursement is possible for fees charged for an examination or for allied costs, such as travel and per diem, incurred while taking an exam which is not a part of a regular course of instruction."

Lastly, we conclude that the Commission may not properly pay on behalf of Mr. Kavaller the fee required by the United States District Court for the Central District of California to be paid by attorneys upon admission to the Bar of that Court. The privilege of practicing before a particular court is one personal to the attorney as an individual and, aside from any other capacity in which he may serve the Government, he is an officer of the court with an obligation to the court and the public no less significant than his obligation to his clients. 47 Comp. Gen. 116, 118 (1967).

In 22 Comp. Gen. 460 (1942), we denied reimbursement of a fee imposed on an attorney working for the Federal Trade Commission when he sought to represent the Government before the 10th Circuit Court of Appeals. There we held that an officer or employee bears the duty of qualifying himself for the performance of his official duties, and that if a license is required for that purpose, he must procure it at his own expense. That decision was reaffirmed by 47 Comp. Gen. 116 (1967), which again denied reimbursement to a Government attorney of the fee he had paid in order to practice before a Federal Court of Appeals. See also 51 Comp. Gen. 701 (1972). Thus, payment for that privilege cannot be made from appropriated funds.

In summary, payment to Mr. Kavaller for the costs of taking the bar examination and for admission to the bar would be improper. Payment for the cost of taking a bar review course would, however, constitute "training" under the Training Act, supra, if the requisite determination of relevancy to the employee's official duties is made and the course is otherwise deemed qualified.


Acting Comptroller General
of the United States